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Nos. 80-1538 and 80-1934

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JAMES PLYLER and STATE OF TEXAS, et al.,
Appellants,

v.

J. and R. DOE, as guardian ad litem for I. Doe, et al.,
Appellees.

IN RE: ALIEN CHILDREN EDUCATION LITIGATION
STATE OF TEXAS AND TEXAS EDUCATION AGENCY,
Appellants,

v.

UNITED STATES OF AMERICA,
Intervenor-Appellee,

and

CERTAIN NAMED AND UNNAMED
UNDOCUMENTED ALIEN CHILDREN,
Appellees.

On Appeal From The United States Court Of Appeals For The Fifth Circuit

Brief of Amici Curiae School Districts: Harlingen Consolidated Independent School District, Mission Independent School District, Brownsville Independent School District, McAllen Independent School District, and San Benito Independent School District, In Support of Appellants

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QUESTIONS PRESENTED

1. Does Section 21.031 of the Texas Education Code, which requires nonresident citizens and nonresident aliens including illegal aliens, to pay tuition in public schools, but which exempts all resident citizens and resident aliens from such charges, contain an invalid classification in violation of the Equal Protection Clause of the Fourteenth Amendment?

2. May Section 21.031, which provides for tuition-free education in public schools only for "residents" of the school district, define illegal aliens as nonresidents of the school district?

3. Is there a rational basis for the classification between residents and nonresidents created by Section 21.031?

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CONSTITUTION AND STATUTES INVOLVED

THE FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION, which provides in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEXAS EDUCATION CODE § 21.031, which provides in pertinent part:

> (a) All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of the Available School Fund for that year.
>
> (b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.
>
> (c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having lawful control resides within the school district.

8 U.S.C. § 1324, which provides in pertinent part:

> (a) Any person including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—
>
> * * *
>
> (3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place including any building or any means of transportation; or
>
> (4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—
>
> any alien, including any alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this Act or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000.00 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: Provided, however, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

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INTEREST OF AMICI CURIAE

The amici curiae are school districts of the State of Texas located in the delta area known as the Lower Rio Grande Valley, in the southernmost portion of the state.

They lie on or near the Rio Grande River, which forms the largest portion of the boundary between the United States and Mexico.

The population of the two counties in which the amici school districts are situated is predominately of Hispanic origin—more than seventy-five percent of the persons in Cameron County and more than eighty percent of those in Hidalgo County are of Spanish descent. U. S. Dept. of Commerce, Bureau of the Census, *Advance Reports, 1980 Census of Population and Housing, Texas*, Pub. No. PHC 80-V-45, pp. 7, 17 (March 1981). The two counties are also among the fastest growing areas in the nation. Between 1970 and 1980, the population of Cameron County increased by forty-nine percent, and Hidalgo County experienced a fifty-six percent increase in population. *Id.*

In contrast to its surging population growth, the per capita income of the Valley is near the lowest in the United States. According to the latest figures available, the Hidalgo County metropolitan market (McAllen-Pharr-Edinburg SMSA) ranked *last* out of the three hundred largest such markets in the country in terms of per capita disposable personal income. I *The Survey of Buying Power Data Service, 1980* (Sales & Marketing Management) Table 3-8. The Cameron County metropolitan market (Brownsville-Harlingen-San Benito SMSA) ranked 298th out of three hundred in the same category. *Id.* in addition, the ad valorem tax bases of these border school districts are well below average. Hensley, *Mexican Immigrant-Alien Student Study 1975-76*, p. 66 (1976).

These overburdened school districts are faced with the task of bearing the primary responsibility for educating

illegal aliens from Mexico if the Texas statute in question is held to be unconstitutional. It is they who will have to bear a disproportionate part of the financial costs that will result from a ruling of unconstitutionality. It is their students who will suffer and their educational programs which must be diluted if they are required to educate a large number of illegal aliens free of tuition. Despite the direct impact on them of adjudications of unconstitutionality, these districts, like those of the suburban areas around the City of Detroit in the Detroit school desegregation case, *Milliken v. Bradley*, 418 U.S. 717, 729-30 (1974), are not parties to and have not participated in, the litigation that will decide their fate. These school districts seek to have the Court understand their position on the validity of the Texas statute in question, a position which has only been touched upon and not pressed by the parties to the litigation.

SUMMARY OF ARGUMENT

Section 21.031 of the Texas Education Code creates a classification between residents, whether citizens or aliens, and non-residents, whether citizens or aliens. The state may validly create such a classification for tuition purposes in its schools. The statute does not create a classification based on citizenship or alienage, but even if it did, such a classification would be valid insofar as applicable to illegal immigrants.

This Court has ruled in a similar setting that the question of whether an alien may establish residency within a state for tuition purposes is purely a matter of state law. The Texas statute merely states Texas law that a person unlawfully within the state may not thereby estab-

lish the domicile necessary to qualify for tuition-free education.

If illegal entrants are entitled to equal protection of the laws, the proper test to be applied in determining the validity of Section 21.031 is the rational basis test. The classification created by the statute is rationally related to the legitimate state interest of providing free public education to Texas residents while at the same time preserving the limited resources available for such education. The classification in Section 21.031 is also reasonably related to the interest of Texas in deterring illegal entry into the country and is in harmony with federal immigration policy. Finally, the classification is rationally related to the state's interest in teaching its children respect for, and obedience to, the rule of law in our society.

ARGUMENT

I. SECTION 21.031 DOES NOT CONTAIN ANY CLASSIFICATION IN TERMS OF ALIENAGE OR CITIZENSHIP NOR ANY CLASSIFICATION BETWEEN LEGAL AND ILLEGAL ALIENS. THE STATUTE DISTINGUISHES BETWEEN RESIDENTS—WHETHER CITIZENS OR ALIENS—AND NON-RESIDENTS—WHETHER CITIZENS OR ALIENS.

The Texas statute in issue does not contain a classification on the basis of citizenship or alienage. Resident citizens and resident aliens are both entitled to tuition-free education. Non-resident citizens and non-resident aliens are both required to pay tuition. The classification was based upon a judgment by the state that a school

district should not provide free education for those who are not legally resident or domiciled within the school district, whether alien or citizen, at the cost of those who are residents. Surely it does not test the bounds of constitutional classification for the state to require the local school districts to afford services to those who are fully and properly ensconced within the districts while denying it to those who are not. This Court has made clear in its rulings that a state may properly treat residents and non-residents differently in determining tuition charges for educational benefits within its schools. Thus, in *Vlandis v. Kline*, 412 U.S. 441, 445, 452-53, 453-54 (1973), the Court said:

> The appellees do not challenge, nor did the District Court invalidate, the option of the State to classify students as resident and non-resident students, thereby obligating non-resident students to pay higher tuition frees than do bona fide residents. The State's right to make such a classification is unquestioned here.
>
> * * *
>
> We fully recognize that a State has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on a preferential tuition basis.
>
> * * *
>
> The State can establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.

See also, Hooban v. Boling, 503 F.2d 648, 650 (6th Cir. 1974); *Kelm v. Carlson*, 473 F.2d 1267, 1268 (6th Cir. 1973); *Johns v. Redeker*, 406 F.2d 878, 883 (8th Cir. 1969); *Michelson v. Cox*, 476 F.Supp. 1315, 1319 (S.D. Iowa 1979); *Montgomery v. Douglas*, 388 F.Supp. 1139, 1142 (D.D.C. 1974); *Pelletreau v. Savage*, 381 F.Supp. 582, 585 (D.N.H. 1974); *Sturgis v. Washington*, 368 F. Supp. 38 (W.D. Wash. 1973), *aff'd mem.*, 414 U.S. 1057 (1973); *Weaver v. Kelton*, 357 F.Supp. 1106, 1110 (E.D. Tex. 1973); *Clarke v. Redeker*, 259 F.Supp. 117, 123-24 n. 7 (S.D. Iowa 1966).

Thus, the question at hand is whether a state is required by the equal protection clause to treat illegal aliens as residents for purposes of providing educational benefits to those persons. It is a question which the court of appeals below failed to address because that court assumed, incorrectly, that the Plaintiff children were residents of the school districts. As we shall show in the next section of this brief, there can be no such requirement for treating illegal aliens as residents.

Even if, however, the classification created by the statute were one between citizens and noncitizens, or between legally admitted aliens and illegal aliens, such a classification would still be valid. Indeed, it would not be a classification made by the State of Texas, but a classification made by Congress, which has plenary authority over immigration and naturalization. Legal aliens are in this country at the invitation and tolerance of the United States. As such, they are not subject to discriminatory classification by the States, except for overriding policy reasons. *E.g., Ambach v. Norwick*, 441 U.S. 68 (1979); *Memorial Hospital v. Maricopa County*, 415

U.S. 250 (1974). Illegal aliens, however, stand on a different footing. As this Court noted in *Mathews v. Diaz*, 426 U.S. 67, 80 (1976):

> [The] fact that Congress has provided some welfare benefits for citizens does not require it to provide like benefits for *all aliens*. Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and *some* of its guests. [Emphasis in original.]

The proposition becomes more cogent in light of the fact that an obligation on the part of the school district to provide educational facilities to illegal aliens results in a proportionate diminution in the educational facilities that it can make available to its resident citizens and resident legal aliens.

II. SECTION 20.031 PROVIDES ONLY THAT ILLEGAL ALIENS SHALL NOT BE TREATED AS RESIDENTS FOR PURPOSES OF TUITION-FREE EDUCATION IN THE PUBLIC SCHOOLS.

As heretofore stated, the real question in this case is whether Texas is forbidden to treat illegal aliens as nonresidents of a school district and, therefore, not qualified to receive free tuition. A cognate question was reviewed by this Court in *Elkins v. Moreno*, 435 U.S. 647 (1978). There, the question was whether Maryland had to treat "G-4 aliens," aliens with a nonimmigrant and temporary status in the United States, as domiciled within the state for purposes of receiving reduced tuition at the University

of Maryland. "Accordingly, the question whether G-4 aliens have the capacity to acquire Maryland domicile is potentially dispositive of this case." 435 U.S. at 662. The Court held that the answer to this question was dependent on federal statutory law and Maryland common law.

In *Elkins*, this Court ruled that the federal statutory law did not require that G-4 aliens maintain a permanent residence abroad. Here, it is clear that the immigration laws do so require as to illegal aliens. It cannot be said of illegal aliens what the Court said of nonimmigrant aliens in *Elkins*, 435 U.S. at 666-67:

> Under present law, therefore, were a G-4 alien to develop a subjective intent to stay indefinitely in the United States, he would be able to do so without violating either the 1952 Act, the Service's regulations, or the terms of his visa. Of course, should a G-4 alien terminate his employment with an international treaty organization, both he and his family would lose their G-4 status. . . . Nonetheless, such an alien would not necessarily be subject to deportation nor would he have to leave and re-enter the country in order to become an immigrant.

Under the federal immigration laws, illegal aliens may not remain within this country and are subject to immediate deportation. 8 U.S.C. § 1227. While legal aliens may change their status from nonimmigrant to immigrant, 435 U.S. at 667-68, illegal aliens are not equally able to change their status from illegal to legal.

The fact that the laws of the United States did not preclude a G-4 alien from establishing domicile did not resolve the issues in *Elkins*, for the Court made it clear that whether such an alien could establish domicile in

Maryland was a matter of Maryland law: "[T]he question whether G-4 aliens can become domiciliaries of Maryland is potentially dispositive of this case and is purely a matter of state law." 435 U.S. at 698. The case was accordingly remanded to the Maryland Court of Appeals to resolve the question.

The Maryland Court of Appeals held that a G-4 alien could establish domicile in Maryland. *Toll v. Moreno*, 284 Md. 425, 444 (1979). In doing so, however, it carefully delineated the distinction between aliens entitled to remain in this country under the immigration laws and those who are illegally here. It quoted from an earlier Maryland Court of Appeals decision, *Dorf v. Skolnik*, 280 Md. 101, 116-17 (1977):

> If under federal law a particular individual must leave this country at a certain date, or cannot remain here indefinitely, then he could not become domiciled in Maryland. Any purported intent to live here indefinitely would be inconsistent with law. It would at most be an unrealistic subjective intent, which is insufficient under Maryland law to establish domicile. [Quoted, 284 Md. at 442-43.]

The Texas law on the question of the meaning of residence for purposes of its educational code is equally clear. The courts have defined "resident," both for citizens and aliens. Residence means the permanent abode of the school child or his parents. As recently recognized by the Court of Appeals for the Fifth Circuit, the concept of residence under Texas law means something more than mere physical presence—it "is more closely related to the concept of domicile." *Arredondo v. Brockette*, 648 F.2d 425, (5th Cir., Unit A, 1981), *aff'g* 482 F.Supp.

212 (S.D. Tex. 1979). *See also, De Leon v. Harlingen Consol. Indep. School Dist.*, 552 S.W.2d 922 (Tex. Civ. App. 1977, no writ). Federal decisions underline the validity of the Texas proposition in the statute that illegal aliens cannot be residents for purposes of the school code. *See, Castillo-Felix v. I.N.S.*, 601 F.2d 459, 464 (9th Cir. 1979); *Anwo v. I.N.S.*, 607 F.2d 435 (D.C. Cir. 1979). *See also, e.g., United States v. Corsi*, 287 U.S. 129, 133 (1932); *United States v. Riela*, 337 F.2d 986 (3d Cir. 1964); *Werblow v. United States*, 134 F.2d 791, 792 (2d Cir. 1943); *United States v. Day*, 43 F.2d 917 (2d Cir. 1930); *United States v. Chandler*, 152 F.Supp. 169, 177 (D.Md. 1957); *United States v. Anastasio*, 120 F.Supp. 435 (D. N.J. 1954); *United States v. Parisi*, 24 F.Supp. 414, 419 (D. Md. 1938); *In re Scriver*, 9 F.Supp. 478, 479-80 (W.D. N.Y. 1935). Illegal entry by aliens cannot be a basis for legal residence. To hold otherwise would be to abolish judicially any real distinction between residency and non-residency.

Thus, whether under the law of the state, which this Court held to be controlling in *Elkins*, or even under the federal decisions construing the immigration laws, as in *Castillo-Felix* and *Anwo*, illegal aliens cannot establish the residence or domicile requisite to qualify for tuition-free education within a Texas school district.

III. THERE ARE REASONABLE BASES FOR THE CLASSIFICATION CREATED BY SECTION 21.031.

Amici contend that illegal immigrants are not entitled to equal protection of the laws under the fourteenth amendment. If the Court should rule otherwise, amici urge that the proper test to be applied in determining the

validity of Section 21.031 is the rational basis test. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). The classification created by the statute is rationally related to the valid governmental interests of preserving the fiscal integrity of the school system, of deterring illegal immigration into the state, and of teaching children respect for law.

A. Fiscal Integrity

The State of Texas has proved that Section 21.031 bears a rational basis to valid fiscal concerns of the state. Certainly, whether one regards it as "compelling" or not, the maintenance of the fiscal integrity of the several hundred school systems in Texas, and particularly in the relatively poor border areas, is a fact in which the state has a legitimate interest. *Vlandis v. Kline*, 412 U.S. 441, 452-53 (1973); *Boe v. Wright*, 648 F.2d 432 (5th Cir., Unit A, 1981) (Reavley & Charles Clark, JJ., specially concurring); *Arredondo v. Brockette*, 648 F.2d 425 (5th Cir., Unit A, 1981); *Hernandez v. Houston Indep. School Dist.*, 558 S.W.2d 121, 125 (Tex. Civ. App. 1977, writ ref'd n.r.e.); *De Leon v. Harlingen Consol. Indep. School Dist.*, 552 S.W.2d 922, 925 (Tex. Civ. App. 1977, no writ).

As is forcefully presented in the special concurring opinion in *Boe v. Wright*, 648 F.2d 432 (5th Cir., Unit A, 1981), Texas has a valid governmental interest in providing universal public education while at the same time preserving its limited resources available for such education. Through enactment of Section 21.031, the state has determined the priority in which such resources are to be applied. It is reasonable on fiscal grounds to limit the availability of free public education to persons who are

of a specified age at the beginning of the scholastic year, as Section 21.031 does. Further, it is reasonable on fiscal grounds to charge tuition for children who are wards of other states and who attend Texas schools. *East Texas Guidance & Achievement Center v. Brockette*, 431 F. Supp. 231 (E.D. Tex. 1977) (three-judge court). Amici contend that it is likewise reasonable to limit free education to bona fide residents, who by reason of such publicly provided education will be prepared to make a greater contribution to the state's economy and future. *Starns v. Malkerson*, 326 F.Supp. 234, 241 (D. Minn. 1970), *aff'd*, 401 U.S. 985 (1971).

As has been demonstrated, illegal aliens are not bona fide residents of Texas. Their continued presence in the State depends not upon their own subjective intent to remain, but instead upon the enforcement policies and practices of the Immigration and Naturalization Service. Unless their status as illegal entrants is somehow changed, they may never become citizens of the United States nor exercise the right to vote.

Further, the educational needs of illegal alien children are greater than the needs of other students. The district court in *Doe v. Plyler* found the cost of educating a needy child of Mexican citizenship, whether legally or illegally present, to be thirty to forty percent higher than the cost of educating an "average pupil." *Doe v. Plyler*, 458 F.Supp. 569, 577 (E.D. Tex. 1978). That court also found that Mexican immigrant children generally speak little or no English, are badly educated and over age for their grade level. *Id.* at 576. They thus require extensive bilingual education, but there is a shortage of qualified personnel for such programs. *Id.* Additionally, there are readily apparent budgetary and administrative

planning problems attendant with the unforeseeable arrivals and departures of illegal alien children and their families. *See, Arredondo v. Brockette,* 648 F.2d 425, 428-29 (5th Cir., Unit A, 1981). Indeed, the district court in *Doe v. Plyler* found that fiscal economics would result if Section 21.031 were allowed to stand. *Doe v. Plyler,* 458 F.Supp. 569, 576 (E.D. Tex. 1978).

The State of Texas, therefore, could legitimately conclude that providing free public education to illegal aliens would significantly dilute or diminish the educational benefits available to its own residents. Thus, in order to maintain the quality of education, the state enacted Section 21.031. That statute, in conjunction with the transfer provisions of the Texas Education Code, Tex. Educ. Code §§ 21.061-21.081, allows the individual school districts to decide whether to admit illegal alien children to the school system, and whether to charge tuition for their attendance. If tuition is elected, a limitation is set on the amount that may be charged. Tex. Educ. Code § 21.063. The concern of the state with providing adequate public education to its bona fide residents while at the same time maintaining the fiscal integrity of the school system is readily apparent. The state has a legitimate interest in such matters, and the statute is rationally related to that interest. *Vlandis v. Kline,* 412 U.S. 441, 452-53 (1973).

B. Deterring Illegal Immigration

None of the present amici, who are border school districts, were targeted as defendants in the massive *Alien Children* litigation. It is not because of any shortage of potential plaintiffs along the Texas border, which area has the highest proportion of illegal aliens in the state. The reason for the negative selection is because each

amicus actually experiences the multitude of problems arising from the influx of illegal aliens into the state, and the problems here are of a much greater magnitude than those in the defendant districts which lie well to the north. By filing suits in Houston, the plaintiffs and the organizations which sponsor such litigation divorce their cases as far as possible from ready access to adverse proof of valid state interests in the adoption of Section 21.031.

It is one thing to take a detached view of the rather limited facts presented in forums such as Houston or Tyler, some three to six hundred miles from the border, and to decree that illegal aliens must be afforded all educational rights granted lawful residents everywhere in Texas. A decree like the one here appealed from declares a rule, but it leaves the responsibilities to others to solve the practical problems arising from the ruling.

It is quite another thing to be down in the trenches where those problems are. Then one must face and prepare for the awesome effects on this side of the Rio Grande River of a demographic disaster occurring right next door. Trustees in the border school districts, if they are responsible citizens, need to plan ahead, not just for today or tomorrow, but for what will eventuate twenty years from today—which will come upon us sooner than we think. They must do so in view of the demands of the public for better quality education than that which these tax-poor districts are presently able to provide.

It is dramatically evident to us who live on the southern borders of Texas that Mexico's population growth is running out of control. Mexico City, by way of example, has a present population of 15 million inhabitants—more than the population of Texas according to the tentative 1980

United States census figures. Its projected population for the year 2000 A.D. is *31 million persons* . . . making it the largest city on earth. *U.S. News & World Report,* August 18, 1980, p. 54. From a population of 60 million persons in 1975, Mexico is projected to explode into a population of 131 million by 2000 A.D., or an increase of 119 percent. 1, *The Global 2000 Report to the President: Entering the Twenty-First Century* (U.S. Government Printing Office) 1980. Mexico's present 3.4 percent population growth rate is one of the highest in the world. *Report to the Congress of the United States by the Comptroller General* (November 5, 1980), p. 16, U.S. General Accounting Office, Document GGD-81-4. In addition to mind-boggling inflation, Mexico has an unemployment rate estimated to run as high as forty percent. Critchfield, The Houston Post, January 25, 1981, at 68FF, Col. 1. Persons in Brownsville, Texas, who live almost equidistant between Mexico City and Tyler, Texas, can reasonably expect to experience the explosive pressures of this uncontrolled population expansion before anyone else in the United States. Indeed, the district court in *Doe v. Plyler* recognized that the State of Texas is seriously concerned with the increasing impact of Mexican migration upon its public schools. *Doe v. Plyler,* 458 F.Supp. 569, 576 (E.D. Tex. 1978).

The northward pressures upon the border school districts are the product of persons seeking a better life for themselves and their children. One attribute of a better life is the opportunity for a better education, which must surely play a major role in an illegal immigrant's decision to cross the border. Despite this rather obvious fact, the trial court in *Alien Children* stated that the search for a free public education was not a significant

factor in illegal immigration. *In re: Alien Children Education Litigation*, 501 F.Supp. 544, 578-79 (S.D. Tex. 1980). In cases in which border school districts were actually parties, however, proof was adduced which renders that sort of finding highly suspect. *Arredondo v. Brockette*, 482 F.Supp. 212 (S.D. Tex. 1979), *aff'd*, 648 F.2d 425 (5th Cir., Unit A, 1981); *De Leon v. Harlingen Consol. Indep. School Dist.*, 552 S.W.2d 922 (Tex. Civ. App. 1977, no writ). The several plaintiffs in those cases admitted that they came to the United States to go to school so they could learn English.

In the *Arredondo* and *De Leon* cases, a research study by Mr. Jim Hensley entitled, *Mexican Immigrant-Alien Student Study, 1975-76*, "The Impact of Students from Mexico Upon Selected School Districts in Texas Counties Adjacent to the Mexican Border," was received in evidence. This same study was introduced as Defendants' Exhibit 6 in the trial of *Doe v. Plyler*, 458 F.Supp. 569, 576 (E.D. Tex. 1978), but if it was introduced in the trial of *Alien Children*, it is not mentioned in the opinion. While the study lists economic reasons as the major reason for Mexican immigrant/alien students coming to the several districts, nevertheless a desire to learn English was also shown to be an important factor contributing to the inflow. At page 80, the study reports: "Five opinions given for Mexicans coming to the United States related to education. It was felt that a primary reason was to learn English. Secondly, crowded Mexican schools was given as a reason for coming." These opinions were supported by statistics, at page 54 of the study, showing a short duration of enrollment for the Mexican immigrant/alien students. Sixty-eight percent had been enrolled for four years or less and almost one-fourth for *only one*

year. Similarly, the District Court in *Alien Children* found that only ten percent of illegal immigrants may be expected to remain in this country permanently. 501 F.Supp. 544, 558 (S.D. Tex. 1980).

Given these facts, and the fact that under the holding of *United States v. Texas,* 506 F.Supp. 405 (E.D. Tex. 1981), bilingual education for *all* grades is required for *all* students of limited English proficiency, Texas school districts are presently required to educate through thirteen grades of tuition-free, bilingual education all children who illegally cross the border—yet only ten percent can be expected to stay here permanently. And this is the reality in the face of the present "atrocious" overcrowded classroom conditions in border and metropolitan areas, the difficulty in recruiting qualified personnel to deal with the special education problems of such students, and the lack of any concomitant increase in the tax base of the school district due to their presence. *Doe v. Plyler,* 458 F.Supp. 569, 576 (E.D. Tex. 1978). Is there any wonder that local school officials and taxpayers are deeply frustrated with a system which requires the free education of illegal aliens at the expense of those who are legally here? *See, e.g.,* Hensley, *Mexican Immigrant-Alien Student Study,* 1975-76, *supra,* at 23.

The United States Constitution should not mandate such an unjust result, especially when the Constitution of Mexico clearly provides that Mexican children have the right to a free public school education in that nation. Mexico Const. tit.I, ch.I, art. 3 (1917, amended 1946). If by moving to the United States, Mexican children no longer have the opportunity to a tuition-free Mexican education, this is a consequence of a voluntary decision on the part of their parents in crossing the border illegally.

Such persons, by their own actions, trade the educational opportunity available to them in Mexico in exchange for anticipated economic and other benefits in the United States. The fact that they decide to do this should not impose upon the State of Texas the duty of making up to them the education opportunity which they traded away. Contrary to the holding of the courts below, loss to the children of tuition-free education was not the result of any wrongful act of the State of Texas. Mexican citizens do have both access and a right to education. In the case of illegal entrants, it may be exercised simply by re-crossing the Rio Grande River, as immigration law requires, and entering school.

Section 21.031 merely provides that if Mexican citizens decide to move illegally with their children into the United States, the State of Texas is not required to become surrogate to Mexico in providing these children with tuition-free education, to which they already have access in their homeland. As such, it is a reflection of the state's concern over illegal immigration and is a reasonable attempt, in harmony with national immigration policy, to lessen the incentive for such illegal immigration into the state. *Boe v. Wright*, 648 F.2d 432 (5th Cir., Unit A, 1981) (Reavley and Charles Clark, JJ., specially concurring).

C. Respect For Law

Both the court of appeals and district courts below have emphasized, correctly, the importance of basic education to a child's development. *See also, San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 29-30, (1973). But we do not teach our children merely through classroom instruction. We teach them many

lessons through our actions, and perhaps one of the most important such lessons concerns the rule of law in our society and our attitude toward it.

As lawyers, we have always taken pride in the fact that ". . . ours has been a 'government of law rather than of men'." Rhyne, *Law Day-U.S.A.: Emphasizing the Supremacy of Law*, 44 A.B.A.J. 313, 314 (1958). The importance of the rule of law and its value to our society has been emphasized by the legislative branch of our government through the designation of Law Day, U.S.A., 36 U.S.C. § 164, and by the executive branch through presidential proclamations. *See, e.g.* Presidential Proclamation No. 4830, 46 Fed. Reg. 20,135 (1981); Presidential Proclamation, No. 4733, 45 Fed. Reg. 16,161 (1980); Presidential Proclamation, 51 A.B.A.J. 389 (1965). A fundamental tenet of the concept of the rule of law is the people's respect for law as a basis of our democratic process. Indeed, we are encouraged to cultivate "that respect for law that is so vital to the democratic way of life," 36 U.S.C. § 164, and are reminded that "respect for justice under law is vital and abiding only when its roots are grounded in our many traditions of religion, ethics, and philosophy with their common teaching concerning law as the foundation of our social order. . . ." Presidential Proclamation, 46 A.B.A.J., 409 (1960). If education is important to a child's proper development, then in a democratic society training in *respect for obedience to law* is surely an essential part of such training and a legitimate state interest.

We discard a value, long-honored in American society, when through our actions we teach children that they must obey some laws but are free to ignore others when it is in their best economic interest. How can we rationalize

our vaunted system of "equal justice under the law" with a constitutional rule which provides tuition-free educational benefits to those who violate our laws and which denies like benefits to their law-abiding peers who remain abroad and patiently await their return to enter this country under immigration quotas? Such a policy teaches children that in our system not only are people not punished for breaking the law, but they are rewarded for doing so. And at a time when disregard for law has reached crisis proportions, how do we explain to school children the actions of the United States, through its Attorney General, in this case? By federal statute, harboring an illegal alien by a party such as a school district is made a felony. 8 U.S.C. § 1324. Illegal entry is a misdemeanor in the first instance and a felony for all subsequent offenses. 8 U.S.C. §§ 1324, 1326. Yet, in this case, the United States is not only failing to enforce its own laws, but is demanding that United States Courts require Texas school districts to admit illegal aliens into their schools and thus harbor them in violation of federal law.

The State of Texas could legitimately conclude that an official state policy of providing tuition-free educational benefits to unlawful immigrants would have the effect of teaching our children that persons need not obey the laws of our country. The state has a legitimate governmental interest in teaching its children respect for and obedience to law, and Section 21.031 is rationally related to this interest.

CONCLUSION

There is no sound basis for declaring that Texas Education Code Section 21.031 violates the equal protection clause of the fourteenth amendment. The statute defines

residency for purposes of public education, and there are rational bases for its enactment. In any event, ordinary fairness and justice dictate that if the rights of border school districts are to be adjudged, this should be done upon the facts present here, not those in school districts hundreds of miles distant.

It is with reason and upon sound authority that amici accordingly urge this Court to reverse the judgments of the Court of Appeals below and to render judgment upholding the validity of Section 21.031.

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